

Power and Function in Labour Relations Pouvoir et fonction en relations du travail

H. D. Woods

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Résumé de l'article

Le cadre juridique élaboré au Canada pour structurer la négociation collective a été, dans l'ensemble, moins favorable que la législation des États-Unis à l'avènement d'un syndicalisme vigoureux et d'un régime efficace de négociation collective.

On doit cette différence bien davantage à des circonstances fortuites qu'à des décisions prises de propos délibéré. La réalité constitutionnelle canadienne a fait que la puissance syndicale a été contenue, dans la plupart des cas, à l'intérieur des frontières des provinces. De plus, notre pays a tendance à assigner à l'État un rôle plus large que les États-Unis. Sans compter que nous, Canadiens, sommes des pragmatistes juridiques peu enclins à philosopher sur l'état des relations entre syndicat et direction. Nos solutions sont aussi immédiates que nos problèmes, sans égard aux structures fausses que parfois nous érigeons en permanence; ainsi, un état de crise comme la guerre mondiale ou un conflit industriel important provoque une législation qui encadre subséquemment, et fort mal, des réalités beaucoup plus normales.

Or, l'intervention massive de l'État dans les relations entre syndicat et direction pose des problèmes sérieux, à la lumière de concepts comme le pouvoir et la fonction. Là où nous avons un duo en équilibre et en harmonie plus ou moins stables, nous découvrons un triangle inquiétant, qui fausse la relation de puissance des deux parties originelles. Dans la mesure où l'État intervient dans les relations du travail, dans la même mesure l'équilibre est rompu entre les parties, à l'avantage de l'une ou l'autre et souvent au désavantage des deux.

Une telle intervention pose doublement de problèmes du fait que les relations entre syndicat et direction ont un véritable caractère de permanence, de continuité : les parties continuent de vivre très intimement ensemble une fois la convention signée. Et cela est vrai même si les parties acquièrent des dimensions imposantes.

Cela ne signifie pas, toutefois, que ces relations soient stables et immobiles. Elles sont au contraire éminemment mouvantes et changeantes, ce qui complique encore davantage l'intervention de l'État. Celui-ci s'efforce constamment de stabiliser les relations entre syndicat et direction, de réduire pour les parties les nombreuses zones d'indétermination qui les séparent. De tels efforts, on le conçoit, ne sont pas sans danger. En matière de reconnaissance syndicale et de salaire minimum, passe encore. Mais la qualité de cette intervention est plus difficile à évaluer en matière d'extension juridique, par décret, de la convention collective (comme au Québec). Le problème devient plus aigu quand l'État a recours à des mesures dilatoires pour éviter ou pour retarder le plus possible l'échéance d'une grève. L'objectif est louable, mais on a le droit de s'interroger sur les résultats d'une telle législation dans une optique de liberté maxima des parties.

Bref, il est urgent de repenser notre législation du travail à la lumière des objectifs d'une société libre et des effets réels que provoque l'intervention de l'État dans les relations entre syndicat et direction.

Power and Function in Labour Relations

H. D. Woods

The Author contends that the legal framework which has developed in Canada to deal with collective bargaining has been less favourable to the emergence of strong unions and effective collective bargaining than in the American case. This is explained better by fortuitous (and notably constitutional) circumstances than by calculated policy decisions. Canadian pragmatism in this field has led to a relatively massive State intervention which has strongly affected the basically unstable power relationship between labour and management. And the trend is increasing.

One year ago, Archibald Cox, in an address to the 11th Annual Industrial Relations Conference at McGill, said the following:

Until 1937 the great question before the people of the United States was whether they would accept strong unions and collective bargaining as the institutions on which we put primary reliance for solving the problems which face workers in an increasingly industrial world. The nature of the problems, lack of bargaining power, job insecurity, lack of participation in the government of industry, perhaps lack of individual recognition, is clear enough.

The American solution, as Professor Cox points out, was the Wagner Act, upheld by the Supreme Court in 1957, by which the United States became committed to «strong unions and effective collective bargaining.»

A Central Statement

It will be one of the contentions of this essay that the legal framework which we have developed in Canada to deal

WOODS, H.D., former Director, Industrial Relations Centre, McGill University; author of many scholarly articles and books on Industrial Relations in Canada. This essay represents his contribution to the McGill Centre's Twelfth Annual Conference, September 8, 1960.

with collective bargaining has, on the whole, been less favourable to the emergence of strong unions and effective bargaining than in the American case.

I do not suggest for a moment that this has been the result of calculated policy decisions against labour unions. Rather it has been the fruit of fortuitous circumstance such as the constitutional allocation of jurisdiction over labour matters which has made it possible to contain growing union power largely behind provincial boundaries. It reflects also the general Canadian predisposition to assign a larger role to government than is true of the United States and it might even indicate the low level of theorizing in this country about a philosophy of business and of labour-management relations.

Canadian Legal Pragmatism

We are pragmatists. We seek solutions to immediate problems without too much consideration for what we may be building into the more or less permanent structure of institutions. We have not been very much concerned with the long-run impact. Certainly the Fathers of Confederation, when they drafted Sections 91 and 92 of the British North America Act, had no inkling that they, and the court decisions to follow in the Snider Case, would establish an almost insuperable barrier to national company-wide bargaining in 1960, unless the parties of interest should decide to ignore the role of the State and bargain nationally by mutual agreement. Nor, I think, would anyone claim that when the twin principles of compulsory negotiation and restraint on strike action of the Industrial Disputes Investigation Act were made applicable to industry very widely in the war emergency period in 1939, there was any intention that a new Canadian system of industrial relations was being born and was to apply in the post-war period after the crisis for which it was created had passed.

Yet this is what has been done. There exists in Canada today a system of industrial relations which is sufficiently different from that found elsewhere to justify referring to it as unique. This is so even in comparison with the American system which the Canadian most closely resembles. The differences in Canadian and American practice in the field of labour relations is surprising in the light of the great similarities in the general economic institutions and indeed the presence of so many organizations of business and labour which sit astride the boundary

line. These differences are known and understood by a few Canadians and Americans but are assumed not to exist by the vast majority of industrial relations practitioners in both countries. The anguished frustration with which the American industrial relations officer or trade unionist greets the Canadian system when he first experiences it is a sight to behold.

Massive State Intervention

By the Canadian system of industrial relations, I am referring, unless specifically stated to the contrary, to the established machinery of state intervention in the relationships which come into being because of industrial and commercial employment. This is admittedly a definition much too narrow to include all aspects of industrial relationships in Canada, but since we are here concerned with the role of the State, the limited definition is justified.

One can get some idea of the extent and importance of the role of the State in labour relations by examining the Annual Report of the Labour Department of one of the larger provinces. The organization chart of the Department of Labour for the Province of Quebec, for example, contains thirty-eight little position or function boxes. So far as industry is concerned there are four sub-pyramids within the larger functional chart. These are: Security of Persons and Property, Labour-Management Relations, Social Insurance and Assistance, and Apprenticeship. Each sub-pyramid is made up of subordinate groups or sections. Thus, the Labour-Management relations division sub-divides into Conciliation and Arbitration, the Labour Relations Board, the Minimum Wage Commission and Collective Agreements Decrees. In the Security division there are ten sections; in Social Insurance and Assistance there are five; and in Apprenticeship there are six.

The other provincial and the federal departments will be organized differently but the basic fact remains that the scope of governmental function in labour relations has expanded tremendously, and is not likely to decline. If anything, it will increase. This leads me to consider the subject of this paper: «Power and Function in Labour Relations». I propose to confine the examination principally to the Canadian context, only going abroad when comparison lends emphasis.

Industrial Relations Are Power Relations

Practically every legislative act dealing with industrial relationships expands or contracts the legal authority of management vis-a-vis the unions, or adds to or reduces the function of some State agency. And in a sense the evolution of public industrial relations policy is the story of the shifting power and functional relationships of these three « actors » — if I may be permitted to borrow a term from John Dunlop of Harvard. What I am saying is that industrial relations are power relations. This is no recent discovery and I make no claim to originality. But it is worth examining this power relationship as it exists and evolves in this country.

Power is seldom sought simply for the sake of its possession. Power means the ability to command or control or direct. It opens the door of authority and function. A certified union has been given the power to compel negotiation. A law which denies policemen the right to strike extends or guarantees to the civic employer of policemen the power to determine policemen's wages and working conditions without the counter-power of the strike threat. But the imposition of compulsory arbitration of disputes over terms and conditions of work for policemen transfers the private power of the policemen and the civic employer to the arbitrator so far as the matters in dispute are concerned. The legal provision that prevents a labour relations board from certifying a union to represent management personnel protects the authority of the employer over foremen and superintendents.

It follows that it may very well appear to labour, employers, and governments that it is a good thing to shift power in their respective directions. The process of shifting goes on indefinitely by large and small steps. This, of course, is not unique to the labour relations field. Debtors and creditors, manufacturers and consumers, and a host of conflicting interest groups are engaged in continual efforts to shift the balance of power in a direction favourable to themselves.

Labour Relations Are Somewhat Unique

This uniqueness in labour relations is in some of the devices used, such as: discipline, dismissal, discrimination, intimidation, the run-away plant threat, and the lockout on management's side; and slowdowns,

picketing, boycotts, intimidation, strikes, and so on on the union side. And the key to understanding why these devices should be used is to be found in the unique nature of the employment relationship itself. The fact that the thing bought and sold is labour effort or work, whatever title you wish to give it, that it is delivered over time and only through the physical presence of the labourer, and that it is variable as to quantity and quality, and must be integrated with machines, materials, and the labour of others distinguishes the labour market from all others.

There can be little dispute about most commercial contracts. You agree to buy a package of breakfast cereal for a certain price. It is usually standardized and its quality is predictable. If you don't like it you decide to try another brand next week. Ordinarily you do not become embroiled in a dispute with the vendor or the supplier or the manufacturer. The whole thing is quite impersonal.

This is not so in the labour contract. The employer and the worker expect, in most cases, a continuing relationship; and moreover, such continuity is usually a crucial matter for the employee, and not unimportant to the employer. And no matter how much distance grows between the general manager and the worker, and all the speeches and learned articles to the contrary, the relationship is anything but impersonal. Employment involves a whole complex structure of personal or human relations which are almost entirely lacking in other commercial contracts.

It is true that bigness has produced necessary bureaucratic methods, standards, rules of procedure and so on which have increased the element of certainty of function, reduced the element of change, and curbed freedom of action and capriciousness on the part of both the worker and those who manage his work. In other words, in industry there gradually emerge systems of industrial relations which take on more and more the character of formality, and which appear as plant rules and regulations, procedures of routine, and, of course, trade union agreements. Much of the conflict between unions and management concerns the degree of control over the process of changing the rules which is to rest with management, or with collective bargaining involving the union. Since historically, generally with only a few recent exceptions, the whole field of rule-making rested with management, it follows that the success of unions in establishing a bi-lateral system of agreement negotiation and writing represents a gradual ero-

sion of management unilateralism or prerogative. But the conflict goes on and becomes particularly difficult whenever management attempts to regain lost ground, as was illustrated in the last U.S. steel strike where the work-rule issue was important.

Not only do public policies change as a result of a changing climate of opinion, but also the changes take place irregularly and in jumps. I believe that the same is true of the power and function relationships of management and union in a given situation; while there is some gradualism, the important changes result from crises. Just as our I.D.I. Act was the direct result of the coal crisis in Alberta in 1906, so in the private relationship sector, the use of the Rand formula of union security came out of a specific post-war dispute.

It is this power aspect which provides much of the dynamics to industrial relations, and at the same time makes the process so confusing to the outsider, and indeed even to some of the participants. This dynamism is fortified by the evolution of industry and job relations through time. There is the odd notion in some quarters that unionism is the product of bad management, that certain definite goals or improvements will right matters and then unionism will cease to be important.

Industrial Relations Are Unstable

It would be foolish to deny the growth factor in trade unionism and in collective bargaining. Unions do start from nothing and, after growing up, do reach a kind of maturity as Lester has shown, and the relations between a company and a union can be built on a foundation of accumulated experience and established agreements and practices. But there is no permanent stability. And in the consideration of power and function it is especially important to recognize, and never forget, this fact. The reason, though highly complex, can be expressed in simple language. Industrial relationships possess no permanent stability because the problems are constantly changing, new issues are emerging, and new solutions have to be found. The social problems of industrialism do not disappear when resolved, they are reborn; or evolve to new forms as industrialism itself changes. The most we can expect in a relatively free society is a kind of moving equilibrium which never quite gets there and is always being thrown out of balance by changes in the ingredients of industry itself. The balance of relationships will

be disturbed by changes which include, among others, changes in consumer taste and therefore demand, changes in productive technology, the wasting of natural resources and the discovery of new ones, developments in business and productive organization, and one that is often overlooked, simple increase in general affluence.

Reducing the Unstability

The equilibrium between labour and management in a given relationship in a plant, or company, or industry, may be stabilized for periods of time by a number of devices. Certification of unions neutralizes the power of competing unions and establishes a semi-permanent stability of the relationship between a union, a bargaining unit, and an individual employer or employer group. The agreement they sign and the administrative instruments developed to implement it adds stability and certainty to the terms and conditions of work, and fosters routine.

Similarly, the respective roles of the parties of direct interest, labour and management on the one hand and the State or government on the other, may be stabilized by public policy reflected in legislation. Thus, in Canada generally, our legislation gives Labour Relations Boards the major, though not exclusive, role of determining the bargaining unit and the representation rights of unions. The legislation lays down some criteria and establishes the authority necessary for such boards to fill in the gaps. But at the same time the state largely leaves the determination of wages and conditions of work to the private parties. In turn, the private parties are not left with exclusive rights in this negotiation area. In some areas the state establishes minima below which the parties are not permitted legally to operate. Minimum wages present a good example. But in general, except for certain basic minimum protective conditions, the state leaves the determination of working conditions and wages and hours to the unions and management, where collective bargaining is operating, and to individual negotiation where it is not.

An interesting mixture of private and public determination of the terms and conditions of work is found in the provisions of the Quebec Collective Agreement Act. Under this legislation, as is well known, the private agreement negotiated by a union or unions with a group

of employers may be extended by the government and given the force of law. Thus, workers and companies not originally involved in the private negotiations may find themselves bound by the decree based on these same negotiations. Somewhat similar procedures may be found in other countries. I have had experience recently in Jamaica where this is so. In such cases, where the State agency exercises its sovereign power to amend or reject, it may come into collision with the private parties. This was also demonstrated in Jamaica where a Joint Industrial Council of the unions and employers in an industry was seriously perturbed because the government without consultation made minor amendments to minimum wage proposals agreed in the Joint Industrial Council itself.

In the broad context of industrial relations stability such devices usually produce longer-run results than ordinary collective bargaining. Relying for their sanction, as they do, on the State power, they also become involved in the larger bureaucracy of government. They can become built in restraints on further change since they tend to discourage independent privately-negotiated changes on the one hand, and to introduce a public-interest authority on the other. In other words, private and public policy become mixed, and the simple direct expedient of strike action may be restrained because of the confused location of authority under the system and the establishment of conflicting interests within both the labour and management sides.

Our Dilatory Methods of « Solving » Conflicts

Much more important in the unique Canadian system is the use of the delay on the strike and compulsory conciliation. I suggest that we have never quite made up our minds why we continue to use these devices. The reason is given that strikes produce economic waste, which is true, but they also produce valuable results, not the least of which may be a system of private determination of the basic issues of labour and management relations. Because without the strike potential, unions are more or less powerless vis-a-vis management directly, and would be forced to resort entirely to using their political as contrasted with their economic power.

As equally important question to ask is whether in fact our elaborate system of compulsory conciliation produces the results claimed. There has been no thoroughly objective study of the results. Much

of the statistical reporting is probably misleading because it assumes cause and effect without demonstrating it. We need badly a thorough study of compulsory conciliation on a broader scale than yet has been attempted.

It is suggested from time to time that the public is concerned with the terms of the settlements in industrial disputes because of the effects on prices, employment, and the like. Yet the public is quite prepared to accept the results of private bargaining where conciliation has not been necessary. Clearly this public interest in dispute settlement must fail unless it can be established that disputes which might terminate in a strike have an effect on prices more important than those which are settled without a strike. No logical case has been made for general compulsory intervention to prevent strikes on this reasoning.

There may be a case for enforced intervention in specific situations where a recognizable and defineable public interest can be established. This is the reasoning behind the Presidential authority in emergency disputes in the U.S. Public intervention in Canadian railway disputes is inevitable simply because of the enormous role played by this form of transport in the economy and because the employers are largely deprived by public policy of freedom to adjust freight rates upon which their revenues depend. In such cases government, having established controls, must intervene because collective bargaining cannot work properly since the unions are bargaining with the public, and a strike against railway employers will not induce parliament or railway boards to provide rate adjustment.

A.U.S. — Canada Comparison

May I return to the suggestion I made at the beginning that Canadian experience in the development of public policy has not been as conducive to developing vigorous collective bargaining as has the American. The reasons should be fairly obvious. The basic reason is that the power of the private parties has been restricted much more in Canada whereas the State function has been much larger.

In the United States, the constitutional allocation of function has placed labour relations more largely in Federal hands. This is the reverse of the Canadian system where the provinces are predominant.

The effect this difference has had on the growth of strong or weak unions and the character of collective bargaining has not been measured. But logic as well as some spotty evidence indicate that collective bargaining is being confined within provincial boundaries in some cases where it would develop on a broader scale.

Secondly with regard to certification, the requirement of a membership support in some provinces, coupled with the rules regarding a percentage of the bargaining unit rather than of the votes cast in certification elections has almost certainly made it more difficult for unions to force recognition and collective bargaining.

Thirdly, in the U.S., interference with negotiations is not nearly so drastic as in Canada since the former does not impose compulsory delays on economic force, as is the case in Canada. What this means for effective bargaining is again hard to say. We do not need to repeat the figures which have been produced elsewhere to show that compulsory conciliation appears to act as a device which delays and even in some cases worsens collective bargaining.

Fourthly, the Canadian imposition of the no-strike ban coupled with compulsory arbitration of disputes during the life of the agreement has sharply reduced powers still available to the parties in the U.S. In that country the strike and lockout and the question of arbitration are still bargainable issues, although most agreements contain a no-strike clause and an arbitration provision. The effect of the retention of the right to strike on grievances, even if it may be temporarily surrendered in return for an arbitration clause, must be of great importance in actual negotiation to American unionists.

A comparison of the system of industrial relations in the two countries suggests that in the United States public policy is firmly based on effective collective bargaining which leaves the major role to unions and management, whereas in Canada the private function has been sharply curtailed by the expansion of the functions of public boards and officers carrying out public policy formulated by eleven independent governments. The effect of this concentration of power and function in the hands of the various governments and their agencies, and the general constitutional balkanization, is hard to determine. But certainly the experiments in recent years in several provinces suggest that we are moving further along the road to State control and to di-

versity on a regional or provincial basis. The idea of a national pattern of industrial relationships worked out freely by unions and management appears to be coming less and less possible as time passes.

Conclusion

I suggested earlier that the history of industrial relations is partly the story of shifting power and function among the unions, management, and state agencies. It appears that the long-run trend favours a gradual enlargement of the role of the State and a decline in the role of the private parties. But in the process the State becomes increasingly the instrument of shifting of power between labour and management.

POUVOIR ET FONCTION EN RELATIONS DU TRAVAIL

Le cadre juridique élaboré au Canada pour structurer la négociation collective a été, dans l'ensemble, moins favorable que la législation des Etats-Unis à l'avènement d'un syndicalisme vigoureux et d'un régime efficace de négociation collective.

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Bref, il est urgent de repenser notre législation du travail à la lumière des objectifs d'une société libre et des effets réels que provoque l'intervention de l'Etat dans les relations entre syndicat et direction.

La documentation en relations industrielles

Jacques Lucier

Cet article, à préoccupation éclectique, est d'abord destiné au praticien des relations industrielles, intéressé à s'enquérir des diverses sources de références, de formation professionnelle et d'information dans la littérature des relations de travail. L'auteur, avant d'en suggérer un tri personnel en fonction de ce qu'il considère être les besoins courants des praticiens oeuvrant dans les différents secteurs du monde des relations du travail, situe les sources de documentation dans le processus de la recherche en relations industrielles, en classe les types en catégories et énumère, à titre d'exemples, un certain nombre de problèmes pouvant faire objet de recherche.

Introduction

Les professionnels en relations industrielles, qu'ils soient permanents de syndicats, re-

LUCIER, JACQUES, B.A., M.A. (Rel. Ind., Univ. de Montréal), professeur et directeur des stages et travaux pratiques au Département des relations industrielles de l'Université de Montréal.